
United States
Circuit Court of Appeals

For the Ninth Circuit.

J. HOWARD PORTER, JOHN C. PORTER and
PAUL D. PORTER, identified under the Trade
Name PORTER PROPERTY TRUSTEES,
LTD.,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

FILED

APR - 1 1942

PAUL P. O'BRIEN,

NO. 9920

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

BENJ. W. HENDERSON

W. G. EDLING, Esq.

For Commissioner:

JOHN H. PIGG, Esq.

E. M. WOOLF, Esq.

Docket No. 95762

J. HOWARD PORTER, JOHN C. PORTER and
PAUL D. PORTER, Trustees Identified Un-
der the Trade Name PORTER PROPERTY
TRUSTEES, LTD.,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1938

- Oct. 8—Petition received and filed. Taxpayer notified. (Fee paid).
- Oct. 8—Copy of petition served on General Counsel.
- Nov. 23—Answer filed by General Counsel.
- Nov. 23—Request for circuit hearing in Los Angeles, California, filed by General Counsel.

1938

Nov. 30—Notice issued placing proceeding on Los Angeles, Calif., Calendar. Copy of answer and request served.

1939

July 25—Hearing set Sept. 18, 1939 in Los Angeles, California.

Sept. 20—Hearing had before Mr. Kern on the merits. Submitted. Appearance of W. G. Edling and stipulation of facts filed. Briefs due Nov. 6, 1939; Reply briefs due Nov. 27, 1939.

Oct. 17—Transcript of hearing Sept. 20, 1939, filed.

Nov. 6—Brief filed by taxpayer. 11/7/39 copy served on General Counsel.

Nov. 6—Brief filed by General Counsel.

Nov. 27—Reply brief filed by taxpayer.

1940

Sept. 6—Findings of fact and opinion rendered, Kern, Div. 16. Decision will be entered under Rule 50.

Oct. 31—Computation of deficiency filed by General Counsel.

Nov. 4—Hearing set Dec. 4, 1940 on settlement.

Dec. 2—Objections to respondent's computation filed by taxpayer. 12/2/40 copy served on General Counsel.

Dec. 2—Computation of deficiency filed by taxpayer.

Dec. 4—Hearing had before Mr. Smith on settlement under Rule 50. Continued 2 weeks, Dec. 18, 1940.

1940

- Dec. 4—Order continuing proceeding to 12/18/40, Wash. D. C., entered. [1*]
- Dec. 18—Hearing had before Mr. Kern on settlement under Rule 50. Contested. C. A. V. Respondent's alternative recomputation filed. Copy of letter 12/17/40 filed. 1935 Capital Stock Tax Return filed.
- Dec. 30—Transcript of hearing of Dec. 18, 1940 filed.

1941

- Mar. 5—Decision entered, J. W. Kern, Div. 16.
- June 2—Petition for review by United States Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.
- June 4—Affidavit and proof of service filed by taxpayer.
- July 28—Statement of evidence filed by taxpayer.
- Aug. 5—Proof of service and notice of lodging statement of evidence filed.
- Sept. 3—Agreed praecipe for record filed by taxpayer—proof of service thereon. [2]

*Page numbering appearing at top of page of original certified Transcript of Record.

United States Board of Tax Appeals
Docket No. 95762

J. HOWARD PORTER, JOHN C. PORTER, and
PAUL D. PORTER, Trustees, identified under
the trade name PORTER PROPERTY
TRUSTEES, LTD.,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REDETERMINATION OF
INCOME, EXCESS-PROFITS AND SUR-
TAX DEFICIENCY FOR THE YEAR
ENDING DECEMBER 31, 1935.

Comes now, J. Howard Porter, John C. Porter and Paul D. Porter, Trustees, by the said J. Howard Porter, and hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:LA-FC, FHG-90D, Los Angeles, California, dated July 11, 1938, and as a basis for this proceeding allege as follows:

1. That the petitioners are J. Howard Porter, John C. Porter, and Paul D. Porter, Trustees, identified as a Board of Trustees under the trade name Porter Property Trustees, Ltd., and that their address is 205 South Broadway, Los Angeles, California.

2. The notice of deficiency, a copy of which is attached hereto and marked "Exhibit A", was mailed to the petitioners on July 11, 1938.

3. The taxes in controversy are income tax, excess-profits tax and surtax for the calendar year 1935 and in the amount of \$6,029.98. [3]

4. The determination of tax set forth in the said notice is based upon the following errors.

(a) The Commissioner erred in determining that the taxpayers are an association within the meaning of Section 801(a)(2) of the Revenue Act of 1934 and Articles 801-2 and 801-3 of Regulation 86, and are taxable as a corporation, and that as such are subject to the excess-profits tax imposed by Section 702 of said Act, as well as to the liability for surtax imposed by Section 251(a), and the penalty in conformity with Section 351(c) and Section 291 of the said Revenue Act of 1934.

(b) The Commissioner erred in disallowing a deduction from income of \$4516.72 for legal fees and expense during said calendar year 1935.

(c) The Commissioner erred in computing as an additional income to these taxpayers item (d) on Page 3 of his statement, "Payments received on Contracts" in the amount of \$1,627.10.

(d) The Commissioner erred in disallowing as a deduction from income the Stockholders liability assessment in the amount of \$2,202.50, as shown on Page 2, Paragraph 4 of his report.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

(a) That on or about the 28th day of February, 1935 Katie E. Porter and James Porter executed a trust instrument and in connection therewith made an irrevocable transfer to the trustees of said trust of certain property then owned individually by them as their sole and separate property. It was the desire and intention of these trustors to make a present gift of the property in question for the benefit of their five living children and to so place the [4] same in trust that it might be most conveniently and advantageously distributed to the named beneficiaries. The trustors named J. Howard Porter, John C. Porter and Paul D. Porter as designated trustees to administer the trust estate coming into their hands by virtue of the said trust instrument and the details, the said transfers and establishment of said estate, were duly carried out as of February 28, 1935.

The trust instrument provides that the trustees shall not be subject to the trustors nor to the beneficiaries in any manner whatsoever, and that the said beneficiaries shall be named and registered in the Records of the trustees, and that the trustees may, at any time in their discretion and from any available funds in the estate, make partial distribution and ultimately, upon closure of the estate, shall distribute the entire residual fund to the said beneficiaries. The property was irrevocably transferred as a gift in trust for the benefit of the children, and the gift tax paid thereon. No certificates of benefi-

cial interest, transferable or non-transferable, were provided for and none have been issued.

The property making up the corpus of this estate consisted of real estate, farm and city property, land contracts, corporation stock and various kindred personal property. The trustees carried on the activities peculiar to or associated with the said property and for the taxable year ending December 31, 1935 filed income tax returns on Form 1040, together with Fiduciary returns on Form 1041. These disclose that the taxpayers reported a total net income derived from farm property, rentals, landowners royalties and minor items of interest collected on outstanding land contracts. In [5] exercise of discretion vested in the trustees, no distribution to beneficiaries was made for the taxable year 1935.

These taxpayers therefore contend that they are taxable under the Revenue Act of 1934 as a pure ancestral trust and not as a corporation.

(b) That the deduction from income in the amount of \$4,516.72 for legal services and expense is made up of items expended in defending and settling liabilities against the trustees as such, and the trust estate, and not for the purpose of clearing or securing titles to the properties involved, and should, therefore, be allowed.

(c) The instalment land contract payments listed as item (d) in the Commissioner's Report, cover payments received from land sold prior to February 28, 1935 and which contracts were acquired by the

taxpayers as part of the corpus of the trust estate. Under Article 44-5, Regulation 94, any gain because of said instalment contracts is taxable to the predecessor in interest.

(d) The taxpayers acquired as part of the corpus of the trust estate certain stock of Morrison Savings Bank, Morrison, Iowa, which bank failed and was liquidated under a receivership. During the year 1935 the receiver levied an assessment against said stock in the amount of \$2,202.50, which was paid by the taxpayers. The said amount was a total loss determined and paid during the calendar year 1935, and should be allowed as a deduction against income.

Wherefore, your petitioners pray that your Board may hear this proceeding and that it be determined,

1. That the petitioning taxpayers be taxed as a pure [6] ancestral trust and not as a corporation;
2. That the deduction against income for legal fees, in the amount of \$4,516.72, be allowed;
3. That the payments received on contracts, in the amount of \$1,627.10, be not added to income;
4. That the stock assessment, in the sum of \$2,202.50, be allowed as a deduction against income.
5. Such further and other relief as to this Board may seem just.

Signed J. HOWARD PORTER

BENJAMIN W. HENDERSON,
Attorney for Petitioners.

State of California,
County of Los Angeles—ss.

J. Howard Porter, being duly sworn, says: that he is one of the trustees of the Board of Trustees, petitioners above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

J. HOWARD PORTER

Subscribed and sworn to before me this 6th day of October, 1938.

[Seal] **FRANK G. FALLOON,**
Notary Public in and for the County of Los Angeles, State of California. [7]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
939 South Broadway
Los Angeles, Calif.

Jul 11 1938

Office of
Internal Revenue Agent
in Charge
Los Angeles Division

IT:LA-FC

FHG-90D

Porter Property Trustees, Ltd.,
901 Civic Center Building,
Los Angeles, California.

Sirs:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1935 discloses a deficiency of \$1,458.59; that the determination of your excess-profits liability for the year mentioned discloses a deficiency of \$653.06; and that the determination of your surtax liability as a personal holding company for the year mentioned discloses a deficiency of \$3,134.66 and penalty of \$783.67; as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies above stated.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, 939 South Broadway, Los Angeles, California, for the attention of IT:LA-FC. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By GEORGE D. MARTIN, (signed)

Internal Revenue Agent in
Charge.

Enclosures:

Statement.

Form of Waiver. [8]

STATEMENT:

IT:LA-FC

FHG-(90D)

Porter Property Trustees, Ltd.,

901 Civic Center Building,

Los Angeles, California.

Tax Liability for Taxable Year Ended

December 31, 1935.

	Tax liability.	Tax assessed.	Deficiency.
Income Tax	\$1,795.90	\$ 337.31	\$1,458.59
Excess-profits tax	653.06	None	653.06
Surtax Sec. 351, (personal holding company)	3,134.66	None	3,134.66
25% penalty			783.67

In making this determination of your income tax and excess-profits tax liabilities, and of your liability for surtax as a personal holding company, careful consideration has been given to the internal revenue agent's report dated September 28, 1937; to your protests dated October 27, 1937 and April 18, 1938; to the statements made at the conference held on December 28, 1937; and to the information presented in connection with the consideration of your case by the Los Angeles Division of the Technical Staff of the Bureau.

It is held that your organization is an association within the meaning of Section 801(a)(2) of the Revenue Act of 1934 and Articles 801-2 and 801-3 of Regulation 86, and is taxable as a corporation.

In conformity with the holding that you are taxable as a corporation, you are subject to the excess-profits tax imposed by Section 702 of the Revenue Act of 1934.

You are further advised that you are subject to the liability for surtax imposed by Section 351(a) of the Revenue Act of 1934, since the income received and the ownership of shares during the taxable year bring you within the definition of a personal holding company as set forth in subdivision (b)(1) of said section 351 and Article 351-2 of Regulations 86. [9]

Inasmuch as you failed to file a return on Form 112QH as required by Article 351-8 of Regulations 86, 25 per centum of the tax computed under Section 351(a) has been added thereto in conformity with the provisions of Section 351(c) and Section 291 of the Revenue Act of 1934.

The contention raised by you in your protest dated April 18, 1938, that you should be allowed a loss (in an unnamed amount) alleged to have been sustained in the liquidation of the James Porter Investment Company, is denied for the reason that the information received does not indicate that you sustained a deductible loss in any amount. No such loss was claimed in your return.

Your books and records disclose that you expended \$4,516.72 during the taxable year for legal fees and expenses. No deduction for such expenditures was claimed in your return. You now contend in your protest that you should be allowed a

deduction from income for the full amount of \$4,516.72, but no information has been furnished to show that the amount was expended for ordinary and necessary expenses in connection with your trade or business. The deduction is therefore denied as not meeting the requirements of Section 23(a), Revenue Act of 1934.

Your protest contends for a deduction, not claimed in your return, for an amount of \$2,202.50 stockholder's liability incurred by the James Porter Investment Company but paid by you in the taxable year, in connection with the ownership of certain stock in the Morrison Savings Bank, Morrison, Iowa. The payment made has been disallowed as a deduction for income tax purposes for the reason that it has not been substantiated as a loss properly deductible under the provisions of Section 23(f) of the Revenue Act of 1934.

A copy of this letter and statement has been mailed to your representative, Mr. Benjamin W. Henderson, 901 Civic Center Building, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau. [10]

ADJUSTMENT TO NET INCOME

Taxable year ended December 31, 1935.

Net income as disclosed by return on Form 1040.....		\$ 7,192.38
Unallowable deductions and additional income:		
(a) Oil income and royalties increased.....	\$35,714.40	
(b) Farm income increased.....	552.81	
(c) Miscellaneous income	106.19	
(d) Payments received on contracts.....	1,627.10	
(e) Interest received on contracts.....	859.15	
	<hr/>	
Total additions	\$39,859.65	
Additional deductions:		
(f) Interest paid	\$ 2,497.45	
(g) Taxes paid	2,826.18	
(h) Loss Porter Land Co.....	20,000.00	
(i) Office expenses	144.59	
(j) Salaries, Commissions, and miscellaneous	7,636.71	
(k) Depreciation allowable.....	886.00	
	<hr/>	
Total	\$33,990.93	
Net adjustment to income.....		\$ 5,862.72
		<hr/>
Net income as adjusted.....		\$13,061.10

EXPLANATION OF ADJUSTMENTS.

(a) Income from oil properties and royalties, as shown by your books and records:

Shell Oil Company.....		\$12,000.58
Standard Oil Company \$514.25; bonus \$46,000.00...		46,514.25
Petrol Corporation		281.46
Texas Company, bonus.....		4,800.00
		<hr/>
Total income		\$83,596.29
Less depletion at 27½%.....		17,488.98
		<hr/>
Net amount reportable.....		\$46,107.31
Amount included in return:		
Oil royalties	\$12,282.64	
Ground rent	488.00	
	<hr/>	
Total income	\$12,770.64	
Less depletion	3,377.73	9,392.91
	<hr/>	<hr/>
Net additional income.....		\$36,714.40

(b) Farm income:

Crop rent from section 16, Nobles Co., Minn.....	\$	960.12
Rent received from Kern County acreage.....		620.00
		<hr/>
Total receipts	\$	1,580.12
Less wages for supervising.....		500.00
		<hr/>
Net income from farm properties.....	\$	1,080.12
Amount reported in return.....		527.31
		<hr/>
Additional income	\$	552.81

(c) Miscellaneous income, not identified, not included in your return \$106.19.

(d) Profit from payments received on contracts of sale:

Name of contract	Receipts 1935	Percentage of profit.	1935 Profit reportable.
Daisy Cardoze	\$ 119.10	33 $\frac{1}{3}$ %	\$ 39.70
A. Alexis	94.03	20%	18.81
F. Alexis, Jr.....	423.88	1/9	47.10
Harmon	853.10	20%	170.62
Ahman	2,693.45	34.991%	942.47
Detmore	542.00	20%	108.40
Thompson, et al.....	733.24	33 $\frac{1}{3}$ %	244.41
Azends	214.21	20%	42.84
Fife	76.49	1/6	12.75
Total profit reportable.....			\$1,627.10

[12]

The collections made on contracts as indicated represent taxable income to the amount of \$1,627.10, under the provisions of Section 22(a) of the Revenue Act of 1934.

(e) Interest received on contracts of sale represents taxable income, for which no amount was included in your return.

(f) Deductible interest was paid by you during the taxable year to the amount of \$3,838.95, but only \$1,341.50 was claimed as a deduction in your return.

(g) Taxes were paid on your property during the taxable year, representing allowable deductions from income, in a total sum of \$3,884.62, whereas the deduction claimed in your return was only \$1,058.44.

(h) The James Porter Investment Company entered into a contract with Porter Land Company to furnish seed and labor for the 1935 crop. The contract was assumed by you and you actually paid \$19,000.00 of the costs; \$1,000.00 having been advanced by the James Porter Investment Company. Nothing was received from the investment and, since you took over all assets at the basis to the Investment Company, the entire loss is allowable to you.

(i) Office expenses; consisting of supplies and repairs \$76.02, insurance \$49.72, and miscellaneous items \$18.85; represent allowable deductions from gross income under section 23(a), Revenue Act of 1934.

(j) Salaries, wages, commissions, and other expenses, represent allowable deductions from income under the provisions of Section 23, Revenue Act of 1934, as follows:

Wages, miscellaneous		\$ 474.80
Salary James Porter.....	\$5,000.00	
Less amount chargeable to predecessor corporation	833.33	4,166.67
	<hr/>	
Salary Howard Porter.....	\$2,500.00	
Less chargeable to corporation.....	416.67	2,083.33
Commissions, C. W. Bloemer.....		921.11
Title and escrow fees.....		187.00
Appraisal and other expenses.....		131.70
		<hr/>
Total		\$7,964.61

Amount claimed in return.....	327.90
Additional deduction	\$7,636.71
	[13]

(k) Depreciation is allowable as follows:

Section 16; value of buildings \$17,400.00; estimated life 25 years; depreciation at 4%.....	\$ 696.00
Kandiyohi Co. Building; value \$4,750.00; estimated life 25 years; depreciation at 4%.....	190.00
Depreciation allowable (none claimed in return).....	\$ 886.00

COMPUTATION OF TAX.

Taxable year ended December 31, 1935.

Income Tax.

Net income as adjusted.....	\$13,061.10
Income tax at 13 $\frac{3}{4}$ %.....	1,795.90
Income tax assessed; original return, Form 1040 account No. 820825.....	337.31
Deficiency of income tax.....	\$ 1,458.59

Excess-Profits Tax.

Net income for excess-profits tax computation.....	\$13,061.10
No declared value of shares—no capital stock return filed.	
Net income subject to excess-profits tax.....	13,061.10
Excess-profits tax at 5%.....	653.06
Excess profits tax assessed (only Form 1040 filed).....	None
Deficiency of excess-profits tax.....	\$ 653.06

Surtax—Personal Holding Company.

Net income for surtax computation.....	\$13,061.10
Adjustments under sec. 351(b)(3).....	None.
Less 20% of adjusted net income.....	2,612.22
Undistributed adjusted net income.....	\$10,448.88
Surtax under Sec. 351(a) at 30%.....	\$ 3,134.66
Surtax paid (only Form 1040 filed).....	None
Deficiency of surtax under Sec. 351.....	\$ 3,134.66
Penalty; 25% addition to tax under Sec. 291.....	783.67
Deficiency of surtax and penalty.....	\$ 3,918.33

[Endorsed]: U. S. B. T. A. Filed Oct. 8, 1938.

[14]

[Title of Board and Cause.]

ANSWER

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits that the taxes in controversy are income tax, excess profits tax and surtax for the calendar year 1935, but denies the remaining allegations contained in paragraph 3 of the petition.

4. (a), (b), (c), (d) Denies the allegations of error set forth in subparagraphs (a), (b), (c), and (d) of paragraph 4 of the petition. [15]

5. (a), (b), (c), (d) Denies the allegations contained in subparagraphs (a), (b), (c), and (d) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the petition be denied and that the respondent's determination be in all respects approved.

Signed J. P. WENCHEL,

FTH

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

FRANK T. HORNER,

E. A. TONJES,

Special Attorneys,

Bureau of Internal Revenue.

EAT:E 11/15/38

[Endorsed]: U. S. B. T. A. Filed Nov. 23, 1938.

[16]

[Title of Board and Cause.]

FINDINGS OF FACT AND OPINION

Docket No. 95762. Promulgated September 5, 1940.

1. On the facts petitioner is an association taxable as a corporation.

2. Petitioner made a lease of land thought to be oil producing. The lessee in partial consideration for the lease paid to petitioner a cash bonus. No oil was discovered on the premises and they were reconveyed to petitioner. Held, the bonus was not a royalty within the meaning of section 351, Revenue Act of 1934.

3. On the facts, the fair market value of certain land payment contracts transferred to petitioner, as of the time of transfer, was the face amount of the balances due thereon.

4. Amount paid by petitioner as an assessment on bank stock owned by it is not deductible as a loss in the year of payment.

Benjamin W. Henderson, Esq., and Wilford G. Edling, C. P. A., for the petitioners.

John H. Pigg, Esq., for the respondent.

This case involves a deficiency in taxes of the Porter Property Trustees, Ltd. (hereinafter referred to as the petitioner), resulting from respondent's determination for the year 1935, as follows:

Income tax	\$1,458.59
Excess profits tax.....	653.06
Surtax on personal holding company.....	3,134.66
Penalty of 25 percent for failure to file a personal holding company return.....	783.67

The petitioner raised four assignments of error in its petition, but as no evidence was presented on the claim for a deduction of legal fees, the claim having been denied by the respondent in his answer, we must assume that this claim has been abandoned. The principal question is whether petitioner is taxable as an association under section 201 (a) (2) of the Revenue Act of 1934, as respondent contends, or as a trust; and secondary questions, are whether petitioner [17] derived income from sale contracts during the year 1935 in the amount of \$1,627.10, as respondent determined, and whether it is entitled to a deduction, denied by respondent, for its payment of \$2,202.50 in that year because of an assessment levied against the stockholders of a certain defunct bank.

The facts were stipulated in part and in part developed from testimony at the hearing.

FINDINGS OF FACT.

J. Howard Porter, John C. Porter, and Paul D. Porter, are the trustees of the petitioner, Porter Property Trustees, Ltd., an express trust, created by a written instrument dated February 28, 1935. Before February 28, 1935, the entire outstanding capital stock of the James Porter Investment Co., a Delaware corporation, consisting of 2,808 shares, was owned and held by James Porter and Katie E. Porter, husband and wife, and members of their family. The following table shows the interest and relationship of each stockholder:

Name	Relationship	Shares held
James Porter.....	Father	685
Katie E. Porter.....	Mother	1,858
Paul D. Porter.....	Son	50
B. F. Shumway.....	Nominee for father.....	65
W. N. Dennison.....	Husband of daughter (Elizabeth)....	50
Rebecca P. Wells.....	Daughter	50
James Howard Porter.....	Son	50
John C. Porter.....	Son	0
Elizabeth P. Dennison.....	Daughter	0
Total.....		<hr/> 2,808

On February 28, 1935, and for some time before then, the James Porter Investment Co. was the owner of certain personal property, and also held in fee simple certain land, mainly agricultural and unimproved, and situate in Kern County and San Luis Obispo County, California, Nobles County, Minnesota, and Grundy County, Iowa. This land was acquired by the James Porter Investment Co. at the time of its incorporation in 1930, from James Porter and Katie E. Porter in exchange for its capital stock. Such of its personal property as was not acquired by that company in a like manner, and at the same time, was acquired by the company in the course of its ordinary business activities afterwards but before February 28, 1935. Certain of these lands had been improved before and during the period held by the company, and farming operations were carried on by leaseholders for profit on part of these lands while they were owned and held by the company.

On February 28, 1935, James Porter, Katie E. Porter, Paul D. Porter, F. B. Shumway, W. M. Dennison, and James Howard Porter, as grantors, and James Howard Porter, Paul D. Porter, and John C. [18] Porter, as trustees (hereinafter sometimes referred to as the trustees), executed and entered into a written "Conveyance and Contract" agreement, incorporated herein by reference, the relevant parts of which are later set out, by which the trust involved herein, known as the Porter Property Trustees, Ltd., was created. By the terms of the trust instrument, the trustees were selected and appointed by the grantors, and were therein designated and described as the board of trustees and were authorized to act under and use the trade name of Porter Property Trustees, Ltd. There were transferred and conveyed to the trustees at the time of creation of the trust 1,723 shares of the capital stock of the James Porter Investment Co., which constituted all the shares shown in the table above, except the 685 shares in the name of James Porter and 400 of the 1,858 shares in the name of Katie E. Porter. On the day of their constitution as such, February 28, 1935, the trustees, acting in their collective capacity, acquired from James Porter the 685 shares noted above in consideration for their assumption of his debt in the amount of \$52,000.

The interests of the respective trust beneficiaries are described in the trust instrument as "expectancy fractions." Article 15 of the trust instrument provides as follows:

Art. 15. Registration & Dormant Fractions:

Expectancy Fractions under this administration shall at first be allotted in the records of the Board under instructions delivered to the Board by James Howard Porter. Should fractions appear dormant thereby, while held dormant they shall not be reckoned with when apportioning in distributions, such being computed solely by or upon the fractions registered as to beneficiaries at time of making each distribution. Dormant fractions, their usefulness being contingent upon possible future conveniences, remain subject to the discretion of the Trustees.

Pursuant to the provisions of "Art. 15" of the trust instrument, under instructions from James Howard Porter, expectancy fractions were allotted in the records of the board of trustees as follows:

Name	Expectancy fractions
Paul D. Porter.....	290/1000
John C. Porter.....	290/1000
Rebecca P. Wells.....	65/1000
Elizabeth P. Dennison.....	65/1000
James Howard Porter.....	290/1000
Total.....	1000/1000

Immediately after the trustees had acquired the 2,408 shares of the James Porter Investment Co. on February 28, 1935, as set forth above, they exchanged them with that company for all its assets

(except one parcel of real estate situate in Grundy County, Iowa, known as the Porter Homestead), subject to its then outstanding liabilities. Shortly thereafter the company was liquidated and dissolved. [19]

Included among the assets of the company thus acquired were certain land sale contracts which provided for future payments by the purchasers, some of them not becoming due and payable until after their acquisition by the trustees. At this time the company was treating with the Standard Oil Co. for the lease by the latter of a part of these lands situate in Kern County, California. The negotiators had by then reached an agreement for the execution of a lease which was to be executed by the James Porter Investment Co. for the use and benefit of the Porter Property Trustees, Ltd., and then to be assigned to the trustees. This was accordingly done. Under its terms the lessee was obligated to explore, develop, and drill certain wells on the leased land for oil or gas of commercial quality and in commercial quantity. This was done but no oil or gas was found, and the lessee quitclaimed its interest to the trust in the year 1938. Under the terms of this lease agreement, certain oil and gas royalty interests were retained by the lessor, in addition to the bonus paid by the lessee for the execution of the lease.

The trust instrument provided for the following additional matters: (1) The trustees were given the

power to sell and to convey and deliver any, all, or such of the trust properties as they might see fit, in their discretion; (2) the trustees were authorized to add to their number and to choose their successors, provided that the number of trustees should at no time exceed five; (3) the trustees and/or their successors were to hold the trust properties throughout the existence of the trust; (4) the trust was to continue indefinitely for any lawful term; (5) the trustees were authorized to act together, informally over their individual signatures, or collectively, under the name of Porter Property Trustees, Ltd., through duly authorized officers of their board; (6) the trustees, acting as the board of trustees, were authorized to delegate to, by proper resolution, any member or members of the board the necessary authority to transact any and all business of the trust, including the execution of deeds, conveyances, and other instruments in writing; (7) the trustees, in whom "legal and equitable title to all estate properties are vested", were made the absolute owners of the trust properties, with full powers of management thereof; (8) provision was made for regular and special meetings of the board of trustees; (9) the trustees were authorized to engage in any lawful business; to own real estate and personal property in any of the several states, without limit; to buy, sell, improve, exchange, assign, convey and deliver, and to grant trust deeds, and to mortgage or otherwise encumber for obligations; to own stock in or entire charters

of corporations; and to engage the trust funds and properties in any industry or investment in their discretion, hoping thereby to make gain for the trust; (10) the trustees were authorized to and did adopt a [20] common seal; (11) the trustees were authorized to regard the trust instrument as their guide, and to supplement the same from time to time by proper resolutions written into the office records of the board of trustees, or to adopt formal bylaws or rules of business conduct; (12) the trustees were authorized to elect a presiding officer, or president, and to select and appoint a board secretary, and to delegate duties and authority to them; (13) the trustees were authorized to fix and pay all compensation of officers, agents, and employees, and to pay to themselves such reasonable compensation as might be determined by a regular act of their board; (14) the trustees were required to keep a faithful financial record of all business transactions, and the name and address of each known beneficiary; (15) all income and trust funds, when collected or paid over to the trustees, were to constitute a fund from which the trustees should pay trust obligations, reinvest or distribute to the beneficiaries, in their discretion; (16) the personal liability of the trustees was limited to the value of the trust funds and properties; (17) the filing of a copy of the trust instrument in the public records of some designated county was to be constructive notice to the world of such specific personal liability limitations of the trustees, and that all persons,

corporations, or companies extending credit to, contracting with, or having claims against the trustees must look only to the funds and properties of the trust for payment or discharge of such obligations; (18) the trustees might provide for annual or other meetings of the trust beneficiaries to hear and discuss reports and forecasts; (19) while they might adopt resolutions of protest or commendation, no act of the beneficiaries, as such, should be mandatory or interfere with the right of the trustees exclusively to manage the business affairs and control the trust funds and properties; (20) the death of a beneficiary should not entitle his legal heirs or representatives to demand any partition of or interest in or distribution from the trust funds or properties, but his legal heirs might succeed to his interest; (21) changes in beneficiaries from any cause should be duly noted by the trustees on their records; (22) the trustees might at any time, in their discretion, and from any available trust funds, make partial distributions to beneficiaries, and ultimately, upon termination of the trust, should distribute the entire residual trust funds to the beneficiaries in accordance with their proportionate interests; (23) the trust was irrevocable; (24) the beneficiaries might be called by the trustees to meet annually or at other times and they might adopt resolutions but no act of the beneficiaries should be mandatory on the trustees.

James Howard Porter has been, since the trust's inception in 1935, the president of its board of

trustees and, with the two other trustees, has managed its business during the same period. He has been more [21] active than the other trustees in its management. He confers informally with the other trustees. Farm lands owned by the trust are leased to farmers for profit. James Howard Porter executes all leases on behalf of the trust and he attempts to negotiate only such leases as will prove profitable to the trust. The affairs of the trust were carried on during the year 1935 in accordance with the terms of the trust instrument. Of the amount of \$63,596.29 determined by respondent to have been derived by the trust from "oil royalties" during the year 1935, \$46,000 represents a bonus received by the trust from the Standard Oil Co. of California as consideration for the execution of the lease already mentioned.

The James Porter Investment Co. sold certain land on installment contracts before February 28, 1935, and on that day transferred the contracts to the petitioner. The fair market value of these contracts at the time of this transfer was equal to the face amount of the balances due thereon. In 1935 petitioner received payments in the aggregate amount of \$5,749.50 on account of the contracts.

The James Porter Investment Co. was the owner of an undisclosed number of shares in the Morrison Savings Bank of Morrison, Iowa, before February 28, 1935, and on that day transferred these shares to the petitioner. In 1932 or 1933 a receiver of the bank was appointed and at an undisclosed date the

receiver levied an assessment on all the bank's shareholders. Petitioner paid \$2,202.50 in 1935 in full satisfaction of its share of the assessment, pursuant to a notice of assessment received by it in the taxable year, which notice was the first notice given of such assessment.

In arriving at the adjusted net income of \$13,061.10 for the year 1935, as shown by the notice of deficiency, the Commissioner determined that petitioner had a gross income of \$74,794.64, for that year, derived as follows:

Farm income	\$ 1,580.12
Payments Land contracts.....	8,652.89
Oil royalties	63,596.29
Miscellaneous income	106.19
Interest	859.15
	74,794.64
Gross income	74,794.64

In the deficiency notice the Commissioner determined that in 1935 petitioner was an association taxable as a corporation within the meaning of section 801 (a) (2) of the Revenue Act of 1934 and articles 801 (2) and (3) of Treasury Regulations 86, and he further determined that petitioner was a personal holding company within the meaning of section 351 (b) (1) of the Revenue Act of 1934 and article 351 (2) of Regulations 86. In his determination of the deficiencies involved, the Commissioner increased the net income as reported by [22] the trust for the year 1935 by the amount

of \$1,627.10, on account of land contract payments received by the trust during that year, in application of section 22 (a) of the Revenue Act of 1934. The respondent also disallowed a deduction claimed, with the following explanation of his act in the deficiency notice:

Your protest contends for a deduction, not claimed in your return, for an amount of \$2,202.50 stockholder's liability incurred by the James Porter Investment Company but paid by you in the taxable year, in connection with the ownership of certain stock in the Morrison Savings Bank, Morrison, Iowa. The payment made has been disallowed as a deduction for income tax purposes for the reason that it has not been substantiated as a loss properly deductible under the provisions of Section 23 (f) of the Revenue Act of 1934.

Within the time provided by law the petitioner trust filed an individual income tax return for the year 1935, under Title I of the Revenue Act of 1934, disclosing thereon a net income of \$7,192.38 and a tax liability of \$337.31. No other return was filed by petitioner for the year 1935, and as a consequence respondent notified the petitioner of a penalty as follows:

Inasmuch as you failed to file a return on Form 1120H as required by Article 351-8 of Regulations 86, 25 per centum of the tax computed under Section 351 (a) has been added

thereto in conformity with the provisions of Section 351 (c) and Section 291 of the Revenue Act of 1934.

OPINION.

Kern: The principal issue is whether the petitioner, Porter Property Trustees, Ltd., was an association taxable as a corporation, or a trust. On the theory that it was an association, respondent claims the personal holding company surtax and nonfiling penalty.

The question is no longer novel, having received consideration from the Supreme Court in several cases, in the latest of which, *Morrissey v. Commissioner*, 296 U. S. 344, the Court reviewed at length the course of its earlier decisions and the dependent Treasury regulations seeking to interpret them, and laid down criteria which must guide us here. Cf. *Swanson v. Commissioner*, 296 U. S. 362; *Helvering v. Combs*, 296 U. S. 365; *Helvering v. Coleman-Gilbert Associates*, 296 U. S. 369, all decided on the same day as *Morrissey's* case. Both parties cite the *Morrissey* case as authority for their opposite contentions. A glance at it will suffice to show the governing principles. The Court said:

“Association” implies associates. It implies the entering into a joint enterprise, and, as the applicable regulation imports, an enterprise for the transaction of business. This is not the characteristic of an ordinary trust * * *. Such beneficiaries do not ordinarily, and as

mere cestuis que trustent, plan a common effort or enter into a combination for the conduct of a business enterprise. * * * But the nature and purpose of the cooperative undertaking will differentiate it from an ordinary trust. In what are called "business trusts" the object is not to hold and conserve particular property, with incidental powers, [23] as in the traditional type of trusts, but to provide a medium for the conduct of a business and sharing its gains. Thus a trust may be created as a convenient method by which persons become associated for dealings in real estate * * *.

The Court then went on to mention other forms of business enterprise in which the association might be used. It then pointed out that "The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity." "Mere formal procedure" was not to be made "a controlling test." The revenue act's definition embraces more than joint stock companies. And "while the use of corporate forms may furnish persuasive evidence of the existence of an association, the absence of particular forms, or of the usual terminology of corporations, cannot be regarded as decisive." Trustees may act as directors, and the trust terms serve as bylaws. Control by the beneficiaries, the Court pointed out, had in the earlier *Hecht* case been rejected as nonessential, and, hence, meetings of the beneficiaries were unnecessary, as

was likewise the transferability of beneficiary interests to constitute such a group an "association." The trust mechanism, the Court said, permitted the title to property to be held by a continuing body, with centralization of management, the ready transfer of beneficial interests without affecting the trust's continuity, the spread of these interests among many participants, and the limitation of the personal liability of the participant to the property embarked in the enterprise—all advantages which flow from the nature of trusts but approximate closely those afforded by the corporation. To insist on their nature as trust advantages would be to ignore the postulate that only those trusts were sought to be assimilated to corporations for tax purposes which "have the distinctive feature of being created to enable the participants to carry on a business and to divide the gains which accrue from their common undertaking * * *."

Having laid down these principles, the Court then proceeded to examine the facts of the case before it, of a trust created for the development of a tract of land by building golf courses, and club houses, surveying and selling lots, and the like, which was effected by issuing transferable certificates of beneficial interest. The Court thought it a business enterprise, even if no new tracts were acquired: "Its character was determined by the terms of the trust instrument. It was not a liquidating trust; it was still an organization for profit, and the profits were still coming in. The powers conferred on the

trustees continued and could be exercised for such activities as the instrument authorized.”

The companion cases decided by the Supreme Court the same day dealt with situations not unlike that of the Morrissey trust. In Swanson's case, *supra*, a trust was created by two landowners, the trust res being an apartment house, and the assignable beneficial [24] shares, although originally divided among the landowners, were held in the taxable year by their wives. The Court held it an “association.” In the Coleman-Gilbert case, *supra*, five coowners of about 20 apartment houses had conveyed them to trustees, with powers to improve, lease, and sell and to pay income to beneficiaries. The Court again held the trust an “association.” In Combs's case, *supra*, the Court thought that a trust created to finance and drill an oil well, the beneficial interest certificate holders being 13 persons, was likewise an “association.”

Further citations seem unnecessary in view of the fundamental test so clearly laid down by the Supreme Court. That is, whether there is a business purpose back of the trust's creation and continuance. A glance at the history of the present trust leaves no doubt that there was here such a purpose. James Porter and his wife owned certain agricultural lands in California and Minnesota, some of which were actively farmed. In 1930 they created a corporation and took its shares in exchange for these lands, the only other shareholders being Porter's two sons, daughter and son-in-law, and an

outside nominee. The use of the corporate form no doubt had its advantages, but it also had certain disadvantages from the standpoint of tax rates. In 1935 a trust was substituted for the corporation, taking over all its assets except the Porter Homestead, which apparently went to Porter's wife, for her name does not reappear among the holders of the trust's "expectancy fractions." The new trust beneficiaries are still the members of Porter's family, although their relative interests have changed somewhat since the corporation was dissolved. All these facts show, we believe, one increasing purpose to retain the advantages of centralized control, limitation of liability, and others associated with the corporate form in carrying on actively the business of farming lands and distributing the income therefrom.

We may stop a moment here to note those provisions of the trust to which petitioner points as distinguishing it from a business association. It is said that the trustees have exclusive management and may fill vacancies, and that the beneficiaries have no voice in the trust's control; that the trustees may not sell any interests in the trust estate and that the beneficiaries' interests are nontransferable; that the trustees have had no formal meetings and that the beneficiaries have never been consulted on the affairs of the trust. The claim of nontransferability of "expectancies" has not, we think, been clearly established. But we do not think these points are vital, for they go merely to the

outward form of the trust, which, on one side, may approximate the form of a corporation or, on the other, that of a strict trust; and it is not the particular form of doing business so [25] much as the business purpose which must determine. In other words, the statute is intended to hit a trust even strict in form if it is at the same time conducted for profit. Such is the teaching in *Morrissey's* case, as we understand it. Outside the statute's reach lie trusts created to safeguard and conserve the property of widows and infants, or to liquidate such property, the so-called "ancestral" trusts. Although the beneficiaries here were the members of Porter's family, there is no evidence to convince us that the trust's primary purpose was to hold the farms during the children's infancy or liquidate them in the process of administration. In so far as appears from the testimony, none of the children was an infant when the trust was created; and the only testimony pointing toward an intention to liquidate was Porter's rather vague statement that "we would have offered it [some of the trust lands] for sale or trade if we could get what we considered right for it." The family relationship of the grantors, trustees, and beneficiaries does not in itself establish the trust as "ancestral" or determine the category in which it should fall for tax purposes any more than it would affect the corporate character or tax classification of a corporation similarly constituted. That relationship is merely evidence of the purpose of the trust, which will weigh much or little, depending on other facts and circumstances. The other

facts here indicate a family corporation which it was thought could be operated as a trust under the so-called "Hulbert Plan", without paying corporate rates. In view of the principles later laid down by the Supreme Court, we think it unnecessary to discuss or attempt to distinguish the cases of *Commissioner v. Guitar Trust Estate*, 72 Fed. (2d) 544 (C. C. A., 5th Cir.), and *Blair v. Wilson Syndicate Trust*, 39 Fed. (2d) 43 (C. C. A., 5th Cir.), upon which petitioner relies. Active association of the beneficiaries together in creation of the trust is not an indispensable factor, as petitioner contends, in the creation of a business trust, especially where it is a family trust and the settlors are the father and mother; but if it should be thought so, we need look only beyond the creation of the trust to the prior corporation to find parents and children happily associated together under the form of a corporation in carrying on their farming operations. In the transmutations which followed it would seem of little moment that certain members of the family passed from the active role of shareholders to the passive one of beneficiaries.

We are of the opinion that petitioner was an association and therefore taxable as a corporation.

* * * * *

[26]

Decision will be entered under Rule 50. [28]

United States Board of Tax Appeals
Washington

Docket No. 95762

J. HOWARD PORTER, JOHN C. PORTER and
PAUL D. PORTER, identified under the Trade
Name PORTER PROPERTY TRUSTEES,
LTD.,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Memorandum Findings of Fact and Opinion Promulgated in the above entitled proceeding on September 5, 1940, counsel for respondent filed a computation for entry of deficiency on October 31, 1940, and on December 2, 1940, counsel for petitioner filed a computation of deficiency. Hearing under Rule 50 was held on December 18, 1940, at which time counsel for respondent filed an alternative computation of deficiency. Now, therefore, it is

Ordered and decided: That there is a deficiency in petitioner's income and excess-profits tax liability for the year 1935 in the amounts of \$2,974.24 and \$632.33, respectively.

(Seal) (Signed) JOHN W. KERN

Member

Enter:

Entered Mar. 5, 1941. [29]

[Title of Board and Cause.]

PETITION FOR REVIEW BY THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH DISTRICT

To the Honorable, Judges of the United States
Circuit Court of Appeals for the Ninth District:

I.

J. Howard Porter, John C. Porter, and Paul D. Porter, Trustees, identified as a Board of Trustees under the Trade Name Porter Property Trustees, Ltd., your petitioners, respectfully petition this Honorable Court to review the decision of the United States Board of Tax Appeals entered on the 5th day of March, 1941 and finding a deficiency in income and excess-profits tax due from your petitioners for the calendar year 1935, in the amount of \$2,974.24 and \$632.33 respectively.

Your petitioners are, and at all times mentioned herein have been, citizens of the United States, and the Trustee J. Howard Porter has at all times herein mentioned resided in Southern [30] California. The return of income tax in respect of which the aforementioned tax liability arose was filed by your petitioners with the Collector of Internal Revenue for the 6th California collection district, located in the City of Los Angeles, State of California, which is located within the jurisdiction of the Circuit Court of Appeals for the Ninth Judicial Circuit.

Jurisdiction in this Court to review the decision of the United States Board of Tax Appeals, as

aforesaid, is founded on Section 100-3 of the Revenue Act of 1926 as amended by Sections 603 of the Revenue Act of 1928, 1101 of the Revenue Act of 1932, and 519 of the Revenue Act of 1934.

II.

Petitioners were appointed by their father and mother as Trustees of a Trust Estate on February 28, 1935. Said Estate consisted primarily of farm lands which had been owned by the father and mother for many years and which were now transferred to petitioners in trust for the five children of the grantors. The income in question for the calendar year 1935, and upon which the above mentioned deficiency is based was received by the Trustees from agricultural share rentals and oil and gas leases, all incident to the farm lands and real estate belonging to the trust Estate. The petitioners seasonably filed income tax return with the Collector of Internal Revenue for the 6th collection district of California, located in the City of Los Angeles, State of California, on Fiduciary Income Tax Return Form No. 1041 and 1041A, basing such filing upon the premise that they were trustees of a pure ancestral trust and therefore required to report the trust income upon such basis. [31]

The Board of Tax Appeals held:

(1) That the petitioners were an association and therefore taxable as a corporation.

III.

Assignment of Errors

In making its decision as aforesaid, the United States Board of Tax Appeals committed the following errors upon which your petitioners rely as the basis of this proceeding:

(1) The Board erred in finding that the taxpayers were an association and taxable as a corporation, since the evidence does not support such a finding.

(2) The Board erred in concluding that the petitioners were an association and therefore taxable as a corporation.

(3) The Board erred in finding that there is a deficiency in petitioners' income and excess-profits tax liability for the year 1935 in the amount of \$2,974.24 and \$632.33 respectively, or in any other amounts.

Wherefore, your petitioners pray that this Honorable Court review the decision and order of the United States Board of Tax Appeals and reverse and set aside the same and direct the said Board to enter its order that your petitioners were not an association and were, therefore, not taxable as a corporation, but on the contrary, that your petitioners were taxable as a pure ancestral trust and that there is no deficiency in petitioners' income and excess-profits tax liability for the year 1935; and for the entry of such further orders and directions as shall

[32] by this Court be deemed meet and proper in accordance with law.

BENJAMIN W. HENDERSON

Attorney for Petitioners
901 Civic Center Building
Los Angeles, California

State of California,
County of Los Angeles—ss.

Benjamin W. Henderson, being duly sworn, says: I am one of the attorneys for the petitioners in this proceeding. I prepared the foregoing petition and am familiar with the contents thereof. The allegations of fact contained therein are true to the best of my knowledge, information and belief. This petition is not filed for the purpose of delay, and I believe the petitioners are justly entitled to the relief therein sought.

BENJAMIN W. HENDERSON

Subscribed and sworn to before me this 23rd day of May, 1941.

(Seal)

JOHN F. POOLE

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: U. S. B. T. A. Filed June 2, 1941.

[33]

[Title of Board and Cause.]

STATEMENT OF EVIDENCE

The above entitled cause came on for hearing at Los Angeles, California, before the Honorable John W. Kern, member of the United States Board of Tax Appeals, upon the 20th day of September, 1939, and B. W. Henderson, Esq. and W. G. Edling, Esq. appeared on behalf of Petitioners, and John H. Pigg, Esq. appeared on behalf of Respondents. Thereupon, the following proceedings were had and the parties, by their attorneys, submitted the following evidence.

Thereupon, the Petitioners, to maintain the material averments of their petition, introduced in evidence a stipulation between counsel containing a partial stipulation of the facts in the case, which stipulation was accepted and made a part of the record. The said stipulation sets forth facts as follows:

The petitioners filed, within the time provided by law, an individual income tax return for the year 1935, under Title I of the Revenue Act of 1934, disclosing thereon a net income of [34] \$7,192.38 and a tax liability of \$337.31. No other return was filed by petitioners for the year 1935. (Stipulation p. 6, par. 9)

In his determination of the deficiencies involved in this proceeding, the Commissioner determined that petitioners are an association within the meaning of Sec. 801(a)(2) of the Revenue Act of 1934

and in explanation of such determination the following statement is contained in the deficiency notice.

“It is held that your organization is an association within the meaning of sec. 901(a)(2) of the Revenue Act of 1934 and articles 901-2 and 801-3 of Regulation 86, and taxable as a corporation.”

(Stipulation, p. 6)

The trust agreement by which the petitioners herein were appointed as trustees was executed February 28, 1935 and was made part of said stipulation as Exhibit “A”, attached hereto. (Stipulation, p. 3, par. 3)

Pursuant to the provisions of Article 15 of said Trust Agreement, and with the consent of James Porter and Katie E. Porter, (Tr. p. 2) the beneficiaries under said trust were named as follows:

<u>Name</u>	<u>Expectancy Fractional Interest</u>
Paul D. Porter.....	290/1000
John C. Porter.....	290/1000
Rebecca P. Wells.....	65/1000
Elizabeth P. Dennison.....	65/1000
J. Howard Porter.....	290/1000 (Stipulation, p. 4, par. 6)

The corpus of the trust estate as acquired February 28, 1935 consisted of assets from the James Porter Investment Company, a corporation, the same being principally agriculture [35] and unim-

proved land situate in Kern County and San Luis Obispo County, California, and Nobles County, Minnesota, (Stipulation p. 2, par. 2) and certain land contracts which had been acquired by the James Porter Investment Company in connection with sales of land.

The physical process by which the trustees came into title of the property was as follows:

On February 28, 1935, at the time the trust agreement was executed, James Porter and Katie E. Porter, husband and wife, delivered to the trustees 2408 shares of stock in the James Porter Investment Company out of a total of 2808 shares. The remaining 400 shares were held by Mrs. Katie E. Porter. On the same date the said 2408 shares of stock were surrendered by the said trustees to the James Porter Investment Company in exchange for all of the assets of that company, except one parcel of real estate situated in Grundy County, Iowa, known as the "Porter Homestead". Shortly thereafter the James Porter Investment Company was liquidated and dissolved. (Stipulation p. 4, par. 6)

The property which came into the hands of the trustees, as aforesaid, was property which originally belonged to James Porter and Katie E. Porter, husband and wife, and which was transmitted to the James Porter Investment Company, a corporation, in exchange for its stock, at the time of its incorporation in 1930. Certain of the said lands had been improved and farming operations were carried on by lease tenants. [36] (Stipulation p. 2,

par 2) The entire outstanding capital stock of the James Porter Investment Company on February 28, 1935, and prior thereto, consisting of 2808 shares, was owned and held by James Porter and Katie E. Porter, husband and wife, their nominee and by members of their family.

The following tabulation shows:

- (a) Names of stockholders of the James Porter Investment Company;
- (b) family relationship of said stockholders;
- (c) number of shares of stock held by each stockholder; and
- (d) name and family relationship of two members of the Porter family who were not stockholders of the James Porter Investment Company on the date mentioned. (Stipulation p. 1, par. 1)

Name	Relationship	Number of Shares Held
James Porter	Father	685
Katie E. Porter	Mother	1,858
Paul D. Porter	Son	50
B. F. Shumway	Nominee for Father.....	65
W. M. Dennison	Husband of Daughter (Elizabeth)	50
Rebecca P. Wells	Daughter	50
James Howard Porter	Son	50
John C. Porter	Son	0
Elizabeth P. Dennison	Daughter	0
		2,808

Income to the trust was from farm rentals, from landowners oil royalties under oil and gas leases on the lands at the inception of the trust, and from interest on contracts receivable, likewise acquired.

The Exhibit referred to in the Stipulation, page 3, paragraph 3, as Exhibit "A" the same being a copy of the trust instrument dated February 28, 1935, is attached hereto and made [36A] a part of this statement of evidence.

JAMES PORTER,

witness called on behalf of the petitioners, being first duly sworn on direct examination, testified as follows, said testimony being set forth in narrative form:

I am past seventy years of age and live in Los Angeles, California with my wife, Katherine, or Katie Porter. We were married June 26, 1884 and have lived together as husband and wife since that time. We have five (5) children: John C. Porter, living at Weyburn, Saskatchewan, Canada; Paul D. Porter, living at Waterloo Iowa; Mrs. W. M. Denison, living at Cedar Rapids, Iowa; Rebecca Wells, living at Detroit, Michigan; and Howard Porter, living at Los Angeles, California. At the present time I am retired. My previous occupation was banking, lumbering, and operator of agricultural lands and farms. On February 28, 1935 I remember signing a certain trust agreement wherein James

(Testimony of James Porter.)

Howard Porter, John C. Porter, and Paul D. Porter were made trustees and identified under the Trade Name Porter Property Trustees, Ltd. Before signing this instrument I did not have any conversation with anyone concerning the same, except with my wife. As far as our problem was concerned, that had been under our consideration for years, but as far as the immediate trust was concerned, that was first discussed along about the beginning of 1935 here in California. No one else except Mrs. Porter and myself was present at the time we discussed this matter. (Trans. pp. 14-18)

This was a problem of Mrs. Porter's and myself regard- [37] ing the distribution of the property we had to the family. We wanted to establish an equitable arrangement, an arrangement that we could feel entirely satisfied as to the equitability of it and the safety of it. One of the problems in this for us was that we had a son who was subject to the liquor habit, and to give him property or money was not a safe thing or proper thing to do. When this trust was laid before me it appeared to me immediately that there was a safety there for this son. I took it home and Mrs. Porter and I considered it together. It appealed to us as being a very convenient way whereby to distribute it equitably to the family and with this safety idea in reference to which I have already mentioned—this son's safety. Therefore, immediately we began operations in that direction. I had not discussed this proposition with

(Testimony of James Porter.)

any one of our children, but had consulted with John M. Dennison, my attorney at that time. Mrs. Porter and myself requested, or ordered, that the instrument which we signed be drawn and prepared. After the instrument was prepared for us, Mrs. Porter and I signed it here in Los Angeles. We then requested that James Howard Porter, John C. Porter, and Paul D. Porter act as trustees, but we did not make this request until after the instrument was actually prepared and we had signed it ourselves. (Trans. p. 21) Mrs. Porter and I at the same time signed an order to register our five children as beneficiaries under the terms of this trust. It was our thought to in this manner equitably distribute our property that was going into this trust among our five children. We did it for our children because we thought it was the best way to do it. (Trans. p. 22) [38]

[Clerk's Note: The following is the question and answer testimony of James Porter as narrated above, and inserted at the request of counsel for the petitioner.]

By Mr. Henderson:

Q. Now, Mr. Porter, do you recall on or about February 28, 1935, of signing a certain trust agreement wherein James Howard Porter, Paul D. Porter and John C. Porter were made trustees and identified under the trade name of Porter Property Trustees?

(Testimony of James Porter.)

A. I do remember signing that; yes, sir. [1]

Q. And before signing this instrument, do you recall having had any conversation with anyone concerning the same?

A. No, only except my wife.

Q. Did you have some conversation with her regarding entering into a trust arrangement?

A. I did; yes, sir.

Q. About when did this first conversation occur?

A. As far as the problem was concerned, that had been under consideration for years; but as far as the immediate trust was concerned, that was along about the beginning of the year 1935.

Q. It was at a time when you and Mrs. Porter were both here in California?

A. Yes, sir.

Q. At these conversations when you discussed this matter with Mrs. Porter, that is, when you discussed the general problem, as you referred to it, with Mrs. Porter, was anyone else present other than yourself and Mrs. Porter?

A. No, sir.

Q. You just discussed it between yourselves?

A. Yes, sir.

Q. At the time you first talked to Mrs. Porter early in 1935 regarding this particular trust arrangement, was there anybody present besides yourself and Mrs. Porter? [2]

(Testimony of James Porter.)

A. No, sir.

Q. Now, will you state your conversation—that is, as best you can remember it—with Mrs. Porter regarding this general matter prior to the time you talked of this specific trust arrangement?

Mr. Pigg: Your Honor, may I inquire of counsel at this point the purpose of this question?

Mr. Henderson: My purpose in these questions which are, to this point, more or less preliminary, is to develop testimony as to the purpose, as discussed, as talked back and forth by Mr. and Mrs. Porter, for entering into the trust agreement which was entered into, which is the basis of this proceeding.

The Member: How is that relevant, counsel? We are interested in what kind of a trust it is, and not particularly the purpose of the trust, the reason for the existence of it.

Mr. Henderson: That is true to this extent: However, the purpose of entering into the agreement, I contend, is material as to the trust itself. That is, while the powers of the trustees and grants of property as stated in definite terms, the purpose of the testimony is certainly grounds, or is a subject to be gone into at this time to establish whether or not—as to help establish whether or not——

(Testimony of James Porter.)

The Member (Interrupting): There may be a background [3] to be used in the interpretation of the trust itself and the powers granted. With that exception, I don't see how it would be relevant.

Mr. Pigg: Your Honor, of course, now the question is whether the petitioner is or is not a business trust or an association within the meaning of the statutes. The Supreme Court has said its character must be determined by the trust instrument itself.

Now, I want to object to—reserve rights for the respondent to object to any testimony of this witness offered for the purpose of explaining or attempting to show, what the parties desired to do, or what they desired not to do, as well as what they agreed to do.

The Member: Go ahead.

By Mr. Henderson:

Q. You may answer the question.

A. Will you please repeat it? I have forgotten what it is.

Q. Will you state the conversation that you had with Mrs. Porter relative to entering into a trust arrangement plan prior to the execution of this trust?

A. This was a problem of Mrs. Porter and myself regarding the distribution of the property we had to the family. We wanted to es-

(Testimony of James Porter.)

establish an equitable arrangement, an arrangement that we could feel entirely satisfied, the [4] equitability of it, and the safety of it.

One of the problems in this for us was that we had a son who was subject to the liquor habit, and to give him property or money was not a safe thing or proper thing to do.

When this trust was laid before me it appealed to me immediately that there was a safety there for this son. I took it home and Mrs. Porter and I considered it together. It appealed to us as being a very convenient way whereby distribute it equitably to the family, and with this safety idea in reference to what I have already mentioned, this son's safety. Thereafter, immediately we began operations in that direction.

Q. Now, did you, prior to the time this instrument was signed, talk to any of your children regarding the establishment of a trust or otherwise distributing property to them?

A. No, sir, I had not discussed it with any one of them.

Q. With whom did you consult on that proposition at that time?

A. Well, the trust, as it was finally set up, was submitted to me by Mr. Parkinson.

Q. Did you also consult with your attorney, Mr. Dennison? [5]

(Testimony of James Porter.)

A. I consulted with my attorney at that time, Mr. John M. Dennison.

Q. Referring to the trust instrument itself which you signed and which counsel has stipulated as having been executed and copies furnished, referring to the instrument itself, who requested or ordered those instruments to be drawn as prepared?

A. Mrs. Porter and myself.

Q. At the time you signed those instruments, were any of your children, other than Howard Porter, in Los Angeles?

A. No, sir, they were not.

Q. Will you state, Mr. Porter, just what you did in executing—that is, you and Mrs. Porter—in signing that instrument, and then having others sign it, or procuring the signatures of other signers thereto?

A. Well, it was drawn and we signed it, and I believe there was another party signed with us.

Q. You and Mrs. Porter signed it here in Los Angeles?

A. Yes, sir.

Q. After you signed this instrument, did you then advise or tell the children what you had done?

A. No, sir, I did not.

Q. That is, did you then tell them that you had signed a trust instrument after you and Mrs. Porter had [6] signed it?

A. Later on, perhaps I did.

(Testimony of James Porter.)

Q. And after you and Mrs. Porter signed the trust instrument, did you then request the trustees who signed the instrument as trustees, to-wit, James Howard Porter, Paul D. Porter and John C. Porter, to act as trustees in this matter? A. I did.

Q. But had you requested them to act or informed them you were signing this instrument prior to the time you actually had the instrument prepared and signed it yourself?

A. I did not; everything was done.

Q. Now, Mr. Porter, I show you a signed page or document here entitled "Instructions to Register Beneficiaries," and a copy which has been stipulated to, and a copy which appears in the copies furnished, and ask you if the signature attached here in the lower left-hand corner, James Porter, is your signature?

A. (Examining document) Yes, sir.

Q. And the signature of Katie Porter is the signature of your wife?

A. (Examining document) Yes, sir.

Q. Is that the document which you signed at the time of the creation of this trust wherein you designated the five children, Paul D. Porter, John C. Porter, James Howard Porter,

[7]

Elizabeth P. Dennison and Rebecca Wells as beneficiaries under the terms of the trust?

A. (Examining document) That is it.

(Testimony of James Porter.)

Q. Was that designation done as stated in this particular instruction for the purpose of equitably distributing the property that was going into these trusts among the beneficiaries?

A. It was our thought.

Mr. Pigg: I object and move to strike the answer because it is immaterial. The instrument itself describes and designates exactly how these beneficial interests were to be determined.

The Member: The Witness said he did it for his children, because he thought it was the best way to do it.

Any other questions of this witness?

Mr. Henderson: Just one moment, your Honor.

The Member: We will take a short recess, gentlemen.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

The Member: All right, gentlemen.

By Mr. Henderson:

Q. Mr. Porter, what is your present occupation? A. Well, I guess I am retired.

Mr. Henderson: That is all.

Cross Examination

* * * * *

[8]

The three trustees were chosen by myself and Mrs. Porter, and it is appealing that Howard Porter was considered the logical one to look after the

(Testimony of James Porter.)

business interest of the trust and its property. My confidence was placed in all three of the named trustees, and insofar as I know they have carried on in accordance with the terms of the trust instrument. I haven't followed it up very closely myself, but I think it has been carried on right. I have had really nothing to do with it since its inception. (Trans. p. 27)

JAMES HOWARD PORTER,

a witness called on behalf of the petitioners, being first duly sworn, on

Direct Examination

testified as follows, said testimony being set forth in narrative form:

My name is James Howard Porter; I am also known as J. Howard Porter. I am thirty-one years of age and am actively engaged in property management. I am a son of James Porter and Katie E. Porter. I remember signing the trust agreement of February 28, 1935, wherein I, together with John C. Porter and Paul D. Porter, were appointed as trustees and which Board of Trustees is known under the identifying name of Porter Property Trustees, Ltd. Prior to this date my father or mother hadn't discussed the arrangement with me. I knew there was something going on but I didn't know exactly what it was. They had not discussed any details with me in connection with the matter

(Testimony of James Howard Porter.)

at [39] all. My father and mother requested me to act as a trustee in connection with this matter and I did not know about it until the trust instrument was presented to me at the time it was signed. So far as I know they had not previously discussed this matter with either of the other trustees. I consented to act as a trustee and have been actively in charge of the property with this trust since that time. The other trustees have also paid some attention to the property. We have kept financial records showing income and disbursements and my activities in connection with these trust properties have taken only part of my time. The trustees have never held any formal meetings. I see the other trustees from time to time as I travel around or as they come here. I just lease the property to tenants and when I see the other trustees I tell them what I have done. As to property that is near them, we discuss what they should do to take care of it and that is the way it is handled. Our records are kept here in Los Angeles. We have never held any meetings with the beneficiaries, or advised with them in connection with the conduct of the affairs of this trust. They have not given us any advice or suggestions, and they know nothing about it. We have made some distributions to the beneficiaries under the terms of the trust. The property belonging to the trust is practically all farm land, and some of the land is being farmed by lease tenant farmers under terms of leases which we give

(Testimony of James Howard Porter.)

them. We do not actually farm any of the property ourselves, either as individuals or as trustees. In other words, whatever farm [40] property is farmed is operated by tenants on a lease basis, and we collect whatever rents are due and accruing from these lease tenants. (Trans. pp. 28-34)

We have attempted to get offers for the sale of part of this property through different real estate agents, and through individuals but we have not been able to sell any of the said land. Farm lands have been rather distressed and we haven't made a definite offer of sale. We would have offered it for sale or trade if we could get what we considered right for it. We have attempted to get offers. (Trans p. 35)

[Clerk's Note: The following is the question and answer testimony of James Howard Porter as narrated above, and inserted at the request of counsel for petitioner.]

The Witness: James Howard Porter.

Direct Examination

By Mr. Henderson:

Q. Mr. Porter, are you also known as J. Howard Porter?

A. Yes, sir, most of the time.

Q. And you signed yourself by that signature?
A. Yes, sir.

Q. Very much of the time? A. I do.

Q. Where do you live, Mr. Porter?

(Testimony of James Howard Porter.)

A. Bakersfield.

Q. How old are you? A. Thirty-one.

Q. What is your occupation?

A. Property management, I guess.

Q. And you have lived in California since when? A. January 1935.

Q. And you are the son of James Porter and Katie E. Porter? A. I am.

Q. Mr. Porter, do you recall a certain trust agreement having been entered into on or about February 28, 1935, wherein yourself, John C. Porter and Paul D. Porter were appointed as trustees, and which is known under an [9] identifying name as Porter Property Trustees, Ltd.? A. I do.

Q. Do you recall the occasion upon which you signed that instrument?

A. Yes, I remember it.

Q. You read that instrument before you signed it, I take it? A. Yes, sir.

Q. Now, prior to the time that you read the instrument, had your father discussed—that is, your father or mother, or either of them discussed with you about going into a—or establishing a trust arrangement of any kind?

A. No, they really hadn't discussed the arrangement with me. I knew there was something that was going on, but I didn't know exactly what it was.

(Testimony of James Howard Porter.)

Q. That is, they didn't discuss any details or take you into their confidence in connection with that matter? A. No, sir, not at all.

Q. Then what was the first direct knowledge that you had that this particular trust arrangement was being entered into?

A. The exact trust arrangement?

Q. Yes.

A. In February 1935. [10]

Q. Was it at the time the instrument was presented to you? A. Yes, sir.

Q. Who asked you or requested you to act as a trustee in connection with this matter?

A. My mother and father.

Q. Was that at the time when the instrument was shown to you? A. Yes, it was.

Q. Did you consent to act as a trustee?

A. I did.

Q. Do you, of your own knowledge, know whether or not the other trustees, to-wit, Paul D. Porter and John C. Porter, had been requested to act in the capacity of trustee prior to the time that you signed the instrument?

A. No, they didn't know about it, as far as I know.

Q. At the time you signed the instrument, was there a signature attached thereto as trustee, that is, the signature of John C. and Paul D. Porter?

A. I don't remember just who signed first.

(Testimony of James Howard Porter.)

Q. Do you remember whether or not your mother and father had already signed the instrument at the time you first saw it?

A. I just don't remember the order of the signatures.

Q. Now, Mr. Porter, you have acted as trustee in this [11] trust since the time of its inception, that is, February 28, 1935, have you not? A. I have.

Q. And you have been actively in charge of the property in this trust since that time?

A. Yes, sir, I have.

Q. The other trustees have also paid some attention to the property, I take it?

A. Oh, yes.

Q. Now, you are acquainted with the records of the trust, are you? A. Yes.

Q. Do you keep financial records—that is, records showing your cash transactions?

A. Showing income and disbursements?

Q. Yes. A. Yes, sir.

Q. You have such records kept for you?

A. Yes, sir.

Q. By the way, Mr. Porter, do you manage other property other than the property involved in this particular trust that we are now considering? A. I do.

Q. So that your activities in this trust only consume a part of your time? [12]

(Testimony of James Howard Porter.)

A. That is right.

Q. Now, do you know whether or not any certificates or writings of any kind have been issued or made by the trustees and forwarded to the beneficiaries showing their interest in this trust?

Mr. Pigg: Your Honor, I will have to object to that question on the ground, first, of its incompetency, secondly, that the trust instrument itself describes precisely how the beneficial interests of this trust shall be designated—created and designated and thereafter known; and it is also immaterial because the instrument itself shows on its face not only what the beneficial interests were, but it shows exactly who were the owners of those beneficial interests.

The Member: Overruled.

Mr. Pigg: Exception.

The Member: Exception noted.

The Witness: Could I have the question?

The Member: The question was, Was there any certificates issued to the beneficiaries?

The Witness: No, there is no writing from the trustees to the beneficiaries whatsoever.

The Member: All right.

By Mr. Henderson:

Q. Now, in the conduct of the affairs of this trust, have you held formal meetings with the trustees? [13]

(Testimony of James Howard Porter.)

A. No, no formal meetings. I just see the trustees as I travel around, or they come here.

Q. State briefly how you conduct the affairs of the trustees; that is, is it done by formal resolutions, or just how?

A. No, sir, it is not done by any resolutions. I just lease the property, and when I see the other two trustees I tell them what I have done. If there is anything—that is, a property near to them, we discuss what they should do to take care of it, and that is the way it is handled.

Q. Do you keep your records as to accounting?

A. Yes, sir.

Q. In all cases?

A. Yes, sir; they are kept here in Los Angeles.

Q. Now, have you, since the inception of this trust, held any meetings with the beneficiaries?

A. No, sir.

Q. Or have you called upon them for advice in connection with the conduct of the affairs?

A. Not at all.

Q. Or have they suggested or given you any orders in connection with the affairs of the trust at any time?

A. No; they know nothing about it.

Q. You have made some distributions to the beneficiaries under the terms of the trust, have you not? [14]

A. We have.

Q. Now, referring to the property which is

(Testimony of James Howard Porter.)

the corpus—or property belonging to this particular trust, will you state generally the nature of such property? What kind of property is it?

A. It is practically all farm land.

Q. Are some of those lands under farming activities? A. Yes, sir.

Q. How do you, as trustee, handle those particular activities?

A. Through leases to tenant farmers.

Q. Do you operate any of that property yourself? A. (Pause)

Q. That is, do you actually farm any of that property yourself as an individual or as a trustee? A. No, sir.

Q. In other words, whatever farming property that is operated is operated by leased tenants? A. Yes, sir; that is it.

Q. Do you collect whatever rents are due and accruing from those lease tenants?

A. That is right.

Q. Now, have you made any offers to sell any part of this property during the time that you have had it under supervision in this trust?

[15]

A. We haven't made a definite offer.

Q. Have you offered it for sale or trade?

A. We would have offered it for sale or trade if we could get what we considered right for it.

Q. What has been the condition as to obtaining an offer of sale during this time?

(Testimony of James Howard Porter.)

A. Well, farm lands have been rather distressed and we considered we couldn't get near what the property was worth.

Q. Have you attempted to get any offers on any part of it? A. Yes, sir, we have.

Q. That has been through different real estate agents whom you have contacted trying to get offers for sale?

A. That is right, and other individuals also besides real estate men. [16]

Cross Examination

My occupation or business is that of property management. A portion of my duties in that respect pertain to the properties owned by the petitioners in this case. I am president of the Board of Trustees and I am more active in the management of the trust property than the other trustees. I, together with the other trustees, manage the property pursuant to the terms of the trust, and it happens that I am the more active. As part of my duties I recommend and attempt to make those leases that would be profitable and I take such action as is necessary to enter into such leases for the benefit of the trust. I attend to other business affairs of the trust, such as seeing that collections are made and that obligations are paid, and maintain a set of books of account which reflect our financial condition. We have a bookkeeper to take care of the

(Testimony of James Howard Porter.)

books. The business and affairs of the petitioners, which consisted of leasing of [41] lands and collecting the rentals thereon, were carried on during the year 1935 in accordance with the terms of the trust instrument to the best of our ability. We attempted in any event to do that.

Petitioners, J. Howard Porter, John C. Porter, and Paul D. Porter, identified under the Trade Name Porter Property Trustees, Ltd., tender and present the foregoing as their Statement of Evidence in this case and pray that the same may be approved by the United States Board of Tax Appeals and made a part of the record in this case.

BENJAMIN W. HENDERSON
Attorney for Petitioners [42]

“Hulbert Plan”

CONVEYANCE AND CONTRACT

Whereby to Establish (not create) Property in Absolute Ownership in Natural Persons, Who, for Convenience, Use a Trade Name (to be proprietary without creating a fictitious entity) Common to Them as a Board; Requiring Strict Accounting; Proclaiming the Limits of Their Financial Liability; Accepting Notice of Injunction; Providing for Succession and Continuity of Trustees; Regarding as Sacred Their Contract Obligations Assumed in Good Faith; Agreeing to Administer for

Conservation and to Fairly Apportion in Distributions; and in All Acting as Citizens May Under Common Law Rights of Contract and Federal Enactments Vouchsafed Since the Adoption of the Constitution of the United States of America and the Amendments Thereto, and Hereby Said Trustees Become Sole Owners of an Estate With No Restraints on Powers of Alienation.

(Copyrights, Hulbert Publishing Co., Chicago, Ill. 1935).

Trade Name to Identify Board: Porter Property Trustees, Ltd.

Executive Offices In: Minneapolis, Minnesota.

CONVEYANCE

and

CONTRACT OF ADMINISTRATION

This Four Part Instrument, Made this 28th day of February 1935, is executed as to parties and subject matter, as follows, to-wit:

The Parties hereto are hereby designated as Two Groups, namely: The Grantors who appoint the hereinafter named Trustees and who Convey and Grant unto them Property which is Not described herein; and The Trustees who Accept their Appointments, who Accept the Property, and who then enter into a Contract containing Articles of Administration as between themselves.

Witnesseth:

APPOINTMENT OF TRUSTEES

James Porter, Katie E. Porter, Paul D. Porter, B. F. Shumway, W. M. Dennison and James Howard Porter, all citizens of the United States, herein designated as Grantors, hereby select and appoint [43] James Howard Porter of Los Angeles, California, John C. Porter of Canada, and Paul D. Porter of Waterloo, Iowa, Trustees, who, with possible Associate and/or Successor Trustees, are, by virtue of this instrument and for convenience in collective holding and bargaining and in their discretion, to act under and use the identifying and Trade Name of

Porter Property Trustees, Ltd.

CONVEYANCE

For and in consideration of the objects and Purposes herein set forth, the cash sum of Ten and no/100 Dollars in hand paid, and other considerations of value, the receipt of which is hereby acknowledged, the said Grantors do hereby make, constitute and appoint the above named and designated Trustees, and their possible associate and/or successor Trustees, to be and they are hereby made in fact Absolute and Exclusive Owners, in their discretion to act under their designated Trade Name as such Or in their individual names collectively, and do hereby sell, assign, transfer, convey and deliver unto said Trustees, and unto their possible

associate and/or successor Trustees, rights and certain Property—with power of sale and full power to convey—to constitute the initial Estate, which shall and is hereby made to include and comprise Certain Personal Property of value, particularly described in schedules and inventories by the Grantors this day delivered to and now held by the said Trustees, and inventories they may make from time to time, but with the understanding that no existing liens or obligations attached to the property or any part thereof shall be assumed as financial obligations against the Estate Corpus, except as the Trustees may expressly specify in writing.

ACCEPTANCE

The said Trustees, for themselves and possible associate and/or successor Trustees, do hereby Accept their appointment and their Offices of Trustees and do hereby Accept the above referred to Personal Property, duly conveyed and delivered, agreeing to Conserve the Estate, to handle and barter, manage and administer it and such accretions thereto as may in future accrue, both real and personal, and in their judgment and discretion, to the best of their ability and as they interpret the meanings, purposes and obligations herein expressed, to carry out the spirit, tenor, intentions and purposes herein set forth, subject to the following Articles of Covenant, to-wit:

CONTRACT CONTAINING
ARTICLES OF ADMINISTRATION

Each Trustee hereinbefore designated, for self and for possible associate and/or successor Trustees, hereby covenants and agrees with the other Trustees in Articles of Administration, to-wit:

Art. 1. Board of Trustees: The Trustees shall be construed to [44] Be the Absolute and Exclusive Owners of the Legal and Equitable Title to all Property, real and personal, in the Estate, having powers including the Power of Sale and the Right and Power to Convey and to Deliver any and/or all such Estate Property at will, and assuming as such Trustees the obligations of Administration to which they have voluntarily subscribed.

The Trustees hereunder and as they may change in personnel, as provided herein, shall, in their collective capacity, be construed to be the Board of Trustees, The Board of Trustees shall not at any time exceed Five in number, and the Trustees herein named, associate Trustees they may elect or appoint to increase their Board, and possible successor Trustees, from time to time elected or appointed to fill vacancies as they may occur, shall hold their Trusteeship and Property Ownership in continuity, for the full life or term of this contract, unless removed by death, resignation, court order or a majority vote of their Board Members for incompetence, fraud or gross neglect hereunder. Whenever vacancies occur the remaining Trustees

may continue alone Or they may elect New Trustee or Trustees to fill vacancies, and should the entire Board be vacated a Court of Equity may appoint Trustees. Whenever any such newly elected or appointed Trustee or Trustees shall have formally accepted such election or appointment the Legal and Equitable Title to the Estate Properties, real and personal, shall rest in the New together with the continuing Trustees in continuity, (Not As Tenants In Common) and without any further act or conveyance. All resignations, removals, elections and/or appointments, and records of any deaths of Trustees, pertaining to Board Membership and Property Ownership shall be inscribed in the records of the Board of Trustees.

Art. 2. Board Acts and Meetings: The Trustees may act together informally over their individual signatures or in their Trade Name through duly authorized Officers of their Board. Names of Officers, duties, appointments and authority delegated shall be duly described and inscribed in their Office Records, and the individual Trustee hereby agrees that the Board may authorize and delegate to, by proper resolution, any member or members of the Board of Trustees, the necessary authority to transact any and all business of the Trustees, including that which is necessary or incidental to the execution of deeds, conveyances and other instruments in writing on behalf of the said Trustees.

They may, by unanimous resolution, provide for holding periodical meetings without notice, and

special meetings may be called at any time by a majority Or officials giving Five days written Notice to each Trustee. At any such regular or special meeting a majority of all the Trustees then constituting the Board shall constitute a quorum to transact business, their acts to be final unless an absent Trustee shall file a protest in writing with the Board Secretary within Five days after receiving notice of such enactment. Such protest can be set aside or overruled by a majority of all the Trustees then constituting the Board of Trustees.

Art. 3. Powers: Being Natural Persons these Trustees, their associate and/or successor Trustees, shall organize themselves into a Board, and may do collectively, in their discretion, any lawful [45] things which citizens may lawfully do in any or all States unless herein limited. (It should be remembered: "Corporations possess only the powers granted to them by law, while individuals possess all powers except those prohibited by law.") They may own real estate or personal property in any State without limit, may buy, sell, improve, exchange, assign, Convey and deliver, may grant Trust Deeds and may mortgage or otherwise encumber for obligations; may own stock in or entire charters of corporations, and may engage the Estate funds and properties in any industry or investment in their discretion, hoping thereby to make gain to the Estate. They may delegate authority at will and Resolutions of their Board

recorded in Minutes of their meetings shall be good and sufficient evidence of their intentions and that their acts are within their powers, discretion and authority to perform.

Art. 4. Trade Name and Seal: The trustees may and hereby do, without actual or pretended creation of a fictitious name, thing or condition, for convenience in collective holding and bargaining, adopt and use a Trade Name and common seal, for the purposes of identifying them collectively and as a Board, the style, design and manner of use of each being shown in the final execution of this instrument. The appearance of the Trade Name shall be construed to refer directly to the Natural Persons comprising this Group or Board and authorized to serve as Trustees hereunder. The form used herein in the final execution of this instrument is cited as a good form to follow when Trustees execute contracts and conveyances in their Trade Name, under Seal and in their Board capacity and indicates properly delegated authority. The Trade Name established hereby is a property possessed and owned by the Board of Trustees.

Art. 5. Administration Rules: The Trustees may regard this instrument as their sufficient guide, supplemented by resolutions of their Board written into their office records to cover contingencies from time to time, or they may adopt formal by-laws or rules of business conduct when expedient, which shall be considered binding upon all Trustees and which may or may not be published.

Art. 6. Board Officials: It is advisable to elect a presiding officer and to select and appoint a Board Secretary and/or other officials, to delegate duties and authority, and some Bank may be chosen as a depository, stipulating as to who may sign checks. This Board has selected and authorized its Board President and a Secretary, as shown in the final execution of this instrument, who are subject to changes in personnel in the discretion of the majority of the Trustees from time to time, and as shown in their records, wherein is also shown the degree of authority delegated to each officer in their Board and the location of the Board office and any changes from time to time shall be recorded therein.

Art. 7. Compensation: The Trustees shall fix and pay all compensation of officers, agents and employees in their discretion, and may pay to themselves as Trustees such reasonable compensation as may be determined by a regular act of their Board. Special attention is called to State and Federal regulations in the matter [46] of employing and paying labor, to which these Trustees shall conform.

Art. 8. Records: The Trustees shall keep a faithful record of all important transactions, inventories of all Estate properties, account of receipts and disbursements, name and address of each known beneficiary, indicating therewith comparative ratios or fractions of expectancy; such general records, although private, to be available for examination of interested parties upon court order or reasonable demand.

Art. 9. **Property Holdings:** Legal and Equitable Title to all Property in the Estate, real and personal, shall rest in the Trustees—members of the Board of Trustees as they appear in continuity, from time to time, in or identified by their Trade Name or in their individual names collectively, the residue to inure to survivors in their Board, and unaffected by death of any member, with power of sale and power to convey and deliver, and in confident expectation that their administration shall be in good faith.

All income and estate funds, when collected or paid over to the Trustees, shall be construed to be part of the Estate Corpus from which the Trustees pay obligations, reinvest and/or distribute, in their discretion.

Art. 10. **Personal Liability Limitations:** These Trustees will follow precedent usual to acts of executors or Trustees of property established with them by will or otherwise, assuming as such Trustees only such obligations attached to the property they acquire as they particularly agree to assume, or resultant from their administration, and then only to the extent and value of the Estate funds and properties, but not personally to jeopardize their personal or separate holdings or property of other Estates they may help to administer.

Art. 11. **Publication of Notice:** Filing this instrument in the public records of some County named and duly referred to shall be constructive Notice to the World of the specific personal liability limitations stipulated, and all persons, corporations

or companies extending credit to, contracting with or having claims against the Estate or Trustees as the Owners thereof must look only to the funds and properties of the Estate for payment or discharge of obligations. To this constructive notice the Trustees should supplement actual notice in writing contracts. The "LTD." which appears in the Trade Name is a reminder to the "World" of "Limited Liability" of Trustees.

Art. 12. Fiscal Reports: The fiscal year of the Trustees shall end on the last day of each calendar year, at which time they should compile the annual summary of their records, disclosing assets and liabilities, receipts, disbursements and balance of funds carried, comparative profits and loss, with net inventories from which to render lists and financial statements; Summaries may be given to each beneficiary of record, read at their meetings or otherwise published for information.

Art. 13. Beneficiaries Meetings: The Trustees may, in their discretion, call the beneficiaries to meet annually or at other [47] times, to hear and discuss reports and forecasts, and while they may adopt resolutions of protest or commendation, no act of the beneficiaries as such shall be mandatory nor to justly question rights of the Trustees to exclusively manage the business affairs and control the Estate funds and properties.

Art. 14. Distributional Accounting System: In the "Hulbert Plan" there is no issue and sale of paper shares under that or any other name or pre-

tense, nor any sale of interests in or fractions of the Estate; merely the expectancy thereunder being divided into fractions, and gross number and nominal or name value of each being predetermined and designated in this contract and in entries in the register which is used to list beneficiaries; such gross number and name value never to be increased or changed. These fractions allotted as to beneficiaries in the register shall be the guide enabling the Trustees to properly apportion each distribution and the summary thereof shall not be construed to be an index to the intrinsic values of the Estate.

Art. 15. *Registration & Dormant Fractions: Expectancy Fractions* under this administration shall at first be allotted in the records of the Board under instructions delivered to the Board by James Howard Porter. Should fractions appear dormant thereby, while held dormant they shall not be reckoned with when apportioning in distributions, such being computed solely by or upon the fractions registered as to beneficiaries at time of making each distribution. Dormant fractions, their usefulness being contingent upon possible future conveniences, remain subject to the discretion of the Trustees.

Art. 16. *Beneficiaries:* The Trustees shall duly register every known beneficiary hereunder, devoting to each a separate entry in their special register of beneficiaries. A beneficiary shall be construed to be as one who tenants property, subject to and without affecting the discretion, management and/or absolute ownership of the Trustees in whom legal and equitable title to all Estate properties are

vested. Death of a beneficiary shall not entitle the legal heirs or representatives to demand any partition of or interest in or distribution from Estate funds and properties, but the legal heirs may succeed to the expectancy as of a decedent upon receipt by the Trustees of satisfactory information. The Trustees, thereupon, shall cancel the obsolete entry in such register and make new entry or entries therein for heirs of the deceased as new beneficiaries and permit such new beneficiaries thereafter to be duly considered when making subsequent distributions while they are so registered. Changes in beneficiaries from any cause shall be duly noted by the Trustees, who shall correct their register accordingly. Corrections shall be made in the register by canceling the obsolete and making new entry or entries of record, and subsequent distributions shall be apportioned according to the changed register.

Art. 17. Distribution of Avails: The Trustees may at any time in their discretion and from any available funds in the Estate, make partial distributions and, ultimately, upon closure of the Estate, shall distribute the entire residual funds; all distributions to be apportioned to beneficiaries of record according to [48] the number of fractions of expectancy appearing as credited to each as compared with the total number of fractions credited as to all registered beneficiaries only, and without regard to any dormant fractions.

Art. 18. Duration: Because rules against unlimited succession provoke eventual closure of this contract and Estate Holding as a safeguard these

Trustees adopt the following: This contract and succession of Trustees and Property Holdings hereunder may continue indefinitely during any lawful term, in the discretion of the Trustees, Except that no suspension of title or restraints upon alienation, should either arise hereunder, shall continue beyond the legal term as at present provided therefor in the individual States where the Trustees are or may become active.

Art. 19. Method of Closure: At time of closure the then acting Board of Trustees shall proceed to liquidate all of the assets, pay off all debts or should funds be insufficient, pay all in equal ratio, and shall distribute any net residue to beneficiaries as provided; When such final distribution shall have been made and a Notice to that effect is filed for record wherever this original instrument was previously recorded, announcing final closure, this Estate Holding shall cease and determine and the Trustees shall be automatically discharged; Provided, however, that any dissatisfied creditors may immediately invoke the good offices of a Court of Equity to review the settlement and approve the same or order adjustment of any error, tort or unfairness.

Art. 20. Injunction—Limitations: The Trustees are hereby enjoined to refrain from any actual or pretended issue or sale of capital stock in or of their Estate, such being a corporation prerogative; nor shall they issue or sell shares, equities, units, fractions or undivided interests, legal, beneficial or equitable, in the Estate, either of which would be

prejudicial to purity of Estate Holding and in contravention of the fundamentals of the "Hulbert Plan of Property Administration" herein employed and adopted.

The Trustees shall not construe Expectancy Fractions, herein provided, to be property of which they are capable of making gifts or sales, nor is it possible to issue, offer for sale, or sell such Expectancy Fractions, they being provided for the convenience of the Board in accounting and apportioning in distributions, and do not express or imply property or property rights of any nature.

Art. 21. Amendments: While Conveyance and Delivery of Properties herein described and referred to is irrevocable, should any part or portion of these articles of covenant, whatsoever, be construed by any Court to be contrary to or in contravention of law, it is the purpose and intention of all parties hereto, that in so far as this Conveyance and Contract is legal it shall continue in full force and effect and the Trustees shall operate thereunder. These Articles of Covenant for formal administration may be altered and/or amended at any time by the full membership of the then acting Board of Trustees jointly executing and attaching an appendix hereto, a [49] copy of which with due reference hereto should be recorded in public records wherever this original instrument was previously recorded.

Art. 22. Taxation — License: These Trustees, being Natural Persons, have the constitutional right to transact business in any or every State free from

requirements imposed upon artificial entities, but should the Trustees engage in a licensable occupation, they, like other citizens, should and must procure the same license. These Trustees are to pay the usual taxes on their physical properties wherever located and assessed unless exempted, also their annual income tax unless exempted by reason of distributions to beneficiaries, as provided under Federal Law. Arrangements have been made for the use of the "Hulbert Plan" and all royalty is fully paid.

Art. 23. Expectancy: For convenience in Accounting, Registration and Apportioning in distributions, the Entire Expectancy Under This Administration (not the Estate properties nor the income therefrom) is hereby divided into One Thousand (1,000) Fractions, each to be termed an Expectancy Fraction and expressed by numbers or words as of No Name Value; such gross number and no name value never to be changed or increased, nor shall the figures thereof be construed to be any index to or expression of the intrinsic values of the Estate or properties whereof it is composed.

In witness whereof, the said Grantors, for themselves, their heirs or assigns, have hereunto set their hands and seals in token of Assignment, Sale, Conveyance and complete Delivery of the properties named, referred to and/or described, and Assent to all of the Articles of Administration as herein set forth.

And the said Trustees, for themselves and possible associate and/or successor Trustees have hereunto set their hands and seals in token of Acceptance of their office or Trusteeship as set forth, Acceptance of the sale and delivery of the property involved, and each does hereby assume the obligations and covenants as set forth, in the Articles of Administration herein.

Done at Los Angeles, California, the day and year first above written.

JAMES PORTER (Seal)

KATIE E. PORTER (Seal)

OSCAR E. ILLIAN PAUL D. PORTER (Seal)

OSCAR E. ILLIAN B. F. SHUMWAY (Seal)

OSCAR E. ILLIAN W. M. DENNISON (Seal)

..... JAMES HOWARD PORTER (Seal)

Witness. Grantors

OSCAR ILLIAN JAMES HOWARD PORTER (Seal)

A. GOETZ PAUL D. PORTER (Seal)

..... JOHN C. PORTER (Seal)

Witness. [50] Trustees

And the said Trustees, in their collective capacity, by their duly authorized officers of the Board, have hereunto subscribed confirmation in their Trade Name and have caused their common Seal to be hereto affixed.

PORTER PROPERTY TRUSTEES,
LTD.

By JAMES HOWARD PORTER

President

and JOHN DENNISON

Secretary of the Board of Trustees

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Hulbert Publishing Company, Chicago, Ill. 1935

State of California,
County of Los Angeles—ss.

I, Benjamin W. Henderson, a Notary Public in and for said County and State of California, do hereby certify that James Porter, Katie E. Porter and James Howard Porter as part of the Grantors, and James Howard Porter as one of the Trustees, designated as such in the within instrument of "Conveyance and Contract", dated this 28th day of February 1935, and consisting of Pages 1 to 10, all included, and which identifies the Board of Trustees to which the above James Howard Porter is numbered, under the Trade Name of Porter Property Trustees, Ltd., are all personally known to me

to be the persons whose names are subscribed to the within instrument, appeared before me and acknowledged that they signed and sealed said instrument for purposes therein set forth; and that James Howard Porter as President and John Denison as Secretary of said Board of Trustees, identified under said Trade Name as provided for in said "Hulbert Plan" instrument of Conveyance and Contract already described, personally known to me, appeared before me and acknowledged to me that they executed the said instrument as the duly elected and authorized officers of said Board of Trustees, and affixed the Board Seal thereto, all for and in behalf of the said Board of Trustees with authority so to do, and that their act is an act of the Trustees collectively by which they are bound as a Board of Trustees.

Given under my hand and notarial seal this 28th day of February 1935, at Los Angeles, California.

(Seal) BENJAMIN W. HENDERSON
Notary Public in and for the said County and State
of California. [51]

My commission expires February 4, 1939.

State of Iowa,
County of Blackhawk—ss.

I, Alice M. Cunningham, a Notary Public in and for said County and State of Iowa, hereby certify that Paul D. Porter and B. F. Shumway, as Grantors and Paul D. Porter, named and designated as

one of the Trustees in the within instrument of Conveyance and Contract, dated the 28th day of February 1935, and consisting of pages 1 to 10, both inclusive, and which identifies the Board of Trustees, which Board includes the said Paul D. Porter, under the Trade Name of Porter Property Trustees, Ltd., are all personally known to me to be the persons whose names are subscribed to the within instrument, appeared before me and acknowledged to me that they signed and sealed said instrument for purposes therein set forth.

Done at Waterloo, Iowa over my hand and Notarial Seal this 5th day of March, 1935.

(Seal) ALICE M. CUNNINGHAM

Notary Public in and for said County and State of Iowa.

My commission expires July 4, 1936.

Dominion of Canada,
Province of Saskatchewan—ss.

Before me, W. A. Goetz, a Notary Public in and for Province of Saskatchewan, Canada, personally appeared John C. Porter, named and designated as one of the Trustees in the within instrument of Conveyance and Contract, personally known to me to be the same person who signed and executed said instrument and acknowledged to me that he signed and executed the same for purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official Seal this 15th day of March 1935.

(Seal)

W. A. GOETZ

Notary Public

My commission expires Perpetual. [52]

State of Iowa,
County of Blackhawk—ss.

I, Alice M. Cunningham, a Notary Public in and for said County and State of Iowa, hereby certify that W. M. Dennison named and designated as one of the Trustees in the within instrument of Conveyance and Contract, dated the 28th day of February 1935, and consisting of pages 1 to 10, and which identifies the Board of Trustees and that he is personally known to me to be the person whose name is subscribed to the within instrument, appeared before me and acknowledged to me that he signed and sealed said instrument for purposes therein set forth.

Done at Waterloo, Iowa over my hand and Notarial Seal this 5th day of March 1935.

(Seal)

ALICE M. CUNNINGHAM

Notary Public in and for said County and State of Iowa.

My commission expires July 4, 1936. [53]

INSTRUCTIONS TO REGISTER
BENEFICIARIES

Porter Property Trustees, Ltd.

Los Angeles, California

Gentlemen:

Conforming to the terms expressed in Article 15 of the instrument of Conveyance and Contract by which you were established as Trustees, I hereby instruct you as follows, to-wit:

Certain debts and obligations have been assumed by this Board of Trustees. These must receive faithful consideration until discharged in their entirety.

You will, therefore, enter into your record of beneficiaries the following data, and the same is to be used as a basis for distribution under said trust estate and never to be changed; except upon death of a beneficiary.

Paul D. Porter	290 one thousandths
John C. Porter	290
Rebecca P. Wells	65
Elizabeth P. Dennison	65
James Howard Porter	290
	<hr/>
	1000

This order is written after much consideration and consultation regarding the history, relationship

and condition of the properties involved and the parties interested, present and past.

Los Angeles, California, February 28th, 1935.

Respectfully yours,

JAMES HOWARD PORTER

O.K.

JAMES PORTER

KATIE E. PORTER

[Endorsed]: U. S. B. T. A. Filed July 28, 1941.

[54]

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 56, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 5 day of Sept. 1941.

(Seal)

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeals.

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 17, inclusive, contain and are a true copy of the supplemental transcript of record, containing excerpts from transcript of the hearing at Los Angeles, California, September 20, 1939, on file and of record in my office as called for by the stipulation of counsel for the parties in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 17th day of December, 1941.

(Seal)

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeals.

[Endorsed]: No. 9920. United States Circuit Court of Appeals for the Ninth Circuit. J. Howard Porter, John C. Porter and Paul D. Porter, identified under the Trade Name Porter Property Trustees, Ltd., Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed September 19, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

U. S. Circuit Court of Appeals
Ninth Circuit

No. 9920

J. HOWARD PORTER, JOHN C. PORTER and
PAUL D. PORTER, Trustees, identified as a
Board of Trustees under the Trade Name
PORTER PROPERTY TRUSTEES, LTD.,
Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY, SUB-
MITTED IN ACCORDANCE WITH RULE
19 (6).

Appellants intend to rely upon the following general proposition:

I. That the taxpayer is a pure ancestral trust, taxable as such, and is not an association taxable as a corporation.

(a) That the trust was established for the purpose of equitably distributing property belonging to aging parents to its natural recipients, their children.

(b) That the trust was established for the protection of an incompetent son.

(c) That under terms of the trust instrument, no operations for profit, as distinguished

from the collection of income from the use of the trust properties, were entered into.

(d) That there was no association, as the trustees acted only at the instance and request of the grantors and the beneficiaries knew nothing of the terms or conditions of the trust and had no part in the establishment or operation of the same.

DESIGNATION

In support of these points it is requested that the following parts of the record be printed:

1. Petition filed October 8, 1938.
2. Answer to Petition filed November 23, 1938.
3. Findings of Fact and Opinion of the Board promulgated on September 5, 1940, from the beginning to and including paragraph on page 10, as follows: "We are of the opinion that petitioner was an association and therefore taxable as a corporation", and excluding all thereafter.
4. Order for Redetermination entered March 5, 1941.
5. Petition for Review.
6. Statement of Evidence, including Exhibit attached.
7. Direct Examination of J. Howard Porter, Reporter's Transcript pages 28 to 35 to and including Answer (p. 35) "That is right, and other individuals also besides real estate men."

8. Direct Examination of James Porter, Reporter's Transcript beginning at page 15, "By Mr. Henderson" and ending with page 22.

Respectfully submitted in accordance with Rule 19(6).

BENJAMIN W. HENDERSON
Attorney for Appellants

State of California,
County of Los Angeles—ss.

Eleanor R. Norbunt, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled matter; that affiant's business address is 1144 Subway Terminal Building, Los Angeles, California. That on the 6th day of November, 1941, affiant served the within Statement on the Respondent in said matter, by placing a true copy thereof in an envelope addressed to the attorney of record for said Respondent, at the office address of said attorney as follows:

J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Treasury Department,
Washington, D. C.

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for

the persons by and for whom said service was made. That there is delivery service by United States mail at the place so addressed, or there is a regular communication by mail between the place of mailing and the place so addressed.

ELEANOR R. NORBUNT

Subscribed and sworn to before me this 6th day of November, 1941.

(Seal)

BENJAMIN W. HENDERSON

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Nov. 7, 1941. Paul P. O'Brien,
Clerk.

